

FOR PUBLICATION and FOR UPLOAD TO [www.vid.uscourts.gov](http://www.vid.uscourts.gov)

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

PETER ANDERSON,	)	
	)	
Plaintiff,	)	Civil No. 1996-118
	)	
v.	)	
	)	
GOVERNMENT OF THE VIRGIN ISLANDS	)	
d/b/a VIRGIN ISLANDS POLICE	)	
DEPARTMENT, RAMON DAVILA, KENNETH	)	
MAPP, ROBERT SOTO, and ELTON LEWIS,	)	
	)	
Defendants.	)	
	)	
	)	

---

**ORDER**

The United States previously filed a notice of substitution for the individual defendant Ramon Davila, pursuant to the Federal Employees Liability Reform and Tort Compensation Act, also known as the Westfall Act, and a part of the Federal Tort Claims Act ["FTCA"]. In support of its notice, the United States proffered the necessary certification that Davila was acting within the scope of his employment, but this certification was signed by the United States Attorney of for the District of Puerto Rico. As discussed in my order of February 26, 2001, the Court rejected this certification as invalid because no authority was cited for a United States attorney to certify under the FTCA a civil action brought in another district. I directed the United States to provide either the authority of the United States Attorney for the District of Puerto Rico to issue a

certification pursuant to 28 U.S.C. § 2679(d), or another certification complying with the statutes and regulations governing the FTCA. See, e.g., 28 C.F.R. § 15.3(a) (restricting the power of the United States Attorneys to make the certifications provided for in . . . 28 U.S.C. § 2679(d) . . . [for] civil actions or proceedings brought against Federal employees in *their* respective districts).

The United States has filed a new certification signed by Jeffrey Axelrad, Director of the Torts Branch, Civil Division, of the United States Department of Justice. The regulations governing FTCA procedure provide:

The authority delegated to the Assistant Attorney General in charge of the Civil Division to make the certification[] provided for in . . . 28 U.S.C. § 2679(d) . . . is hereby delegated . . . to any Director of the Torts Branch . . . .

28 C.F.R. § 15.3 App. ¶ 2. Accordingly, Mr. Axelrad, as the Director of the Torts Branch, has the authority to certify, pursuant to the FTCA, that "Davila was acting within the scope of his employment as an employee of the United States at the time of the incidents out of which plaintiff's claims allegedly rose." (Attachment 1 to Mot. in Compliance and Notice to the Court.)

Although the Court accepts the new certification as valid, it is not bound by the conclusions of the United States that Davila was acting within the scope of his employment at the times relevant to Anderson's complaint. *Melo v. Hafer*, 912 F.2d 628,

642 (3d Cir. 1990) (Certification under 28 U.S.C. § 2679 is subject to judicial review for purposes of determining whether United States can substitute as defendant for individual federal employee.), *aff'd*, 502 U.S. 21 (1991). In this regard, I will schedule this matter for a hearing on the issue of whether Davila was acting within the scope of his employment at the times relevant to Anderson's Fourth Amended Complaint. It is hereby

**ORDERED** that this matter is scheduled for a hearing on **Friday, August 31, 2001, at 11 a.m.** at the District Court in St. Thomas. It is further

**ORDERED** that the parties shall be prepared to argue and present any evidence necessary concerning the scope of employment issue, in accordance with the law of *this* jurisdiction. See, e.g., *Brumfield v. Sanders*, 232 F.3d 376 (3d Cir. 2000); *Melo v. Hafer*, 13 F.3d 736 (3d Cir. 1994); *Schrob v. Catterson*, 967 F.2d 929 (3d Cir. 1992); RESTATEMENT (SECOND) OF AGENCY (1958).

**ENTERED this 22<sup>nd</sup> day of August, 2001.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**  
**By:** \_\_\_\_\_  
**Deputy Clerk**  
**Copies to:**

*Anderson v. Government of the Virgin Islands*  
Civil No. 1996-118  
Order  
Page 4

Hon. G.W. Barnard  
Samuel H. Hall, Jr. Esq.  
Mark Milligan, Esq., P.O. Box 3031, St. Croix, VI 00822-3031  
Lee J. Rohn, Esq., St. Croix, VI **also send via facsimile 773-2954**  
Fidel A. Sevillano Del Rio, Special Asst. U.S. Attorney, Room  
452, Federal Building, 150 Carlos Chardon Street, Hato Rey,  
PR 00918 **also send via facsimile (787) 766-6219**  
Kerry Drue, Asst. Attorney General **also send via**  
**facsimile 774-9710**  
Carol Thomas-Jacobs, Asst. Attorney General **also send via**  
**facsimile 774-9710**  
J. Dimmick, Esq.  
Mrs. Trotman  
Mrs. Jeffries